

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000112-001 DT

03/02/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

BILL C SOLOMON

v.

JOHN RODRIGUEZ (001)

NEAL W BASSETT

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PHOENIX CITY COURT

Cit. No. #5857359

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
 2) DUI W/BAC OF .08 OR MORE
 3) SPEED NOT REASONABLE/PRUDENT

DOB: 05/08/78

DOC: 05/17/01

The Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13-4032.

This matter has been under advisement since the receipt of the supplemental briefs on January 12, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court and the memoranda and supplemental memoranda submitted by counsel.

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Appellee, John Rodriguez, was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); and Driving with a Blood Alcohol Content Greater than .10 or More, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2). Appellee was also charged with Speed Not Reasonable and Prudent, a civil traffic violation, in violation of A.R.S. Section 28-701(A).

Appellee Rodriguez filed a Motion in Limine requesting that the trial judge suppress the results of the breath test. The trial court held an evidentiary hearing on Appellee's Motion on January 28, 2003. At the conclusion of the evidentiary hearing, the trial judge granted Appellee's motion and suppressed the breath test results for all purposes. The State has timely filed a Notice of Appeal in this case.

Because of the unavailability of the officer to testify who had performed the breath test, the parties agreed that the breath test results would not be admitted pursuant to a statutory authority. Rather, Appellant (the State of Arizona) argued that the breath test results would be admissible pursuant to the Rules of Evidence and State ex rel. Collins v. Seidel (Deason, Real Party in Interest)¹. Appellee Rodriguez argued to the trial judge that the breath test results were not admissible pursuant to the Rules of Evidence and Deason because of their unreliability.

Appellee's Motion in Limine was actually a Motion to Suppress involving mixed questions of law and fact. The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.² An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.³ This Court must review those factual findings for an abuse of discretion.⁴ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁵ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.⁶

The trial judge's ruling is supported by the record. This Court will not second-guess a trial judge's evaluation of the testimony of expert witnesses where sufficient evidence exists to support that decision.

¹ 142 Ariz. 587, 691 P.2d 678 (1984).

² ⁶ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1988).

³ Id

⁴ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁵ State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

⁶ State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

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IT IS THEREFORE ORDERED affirming the order of the Phoenix City Court suppressing the breath test results in this case.

IT IS FURTHER ORDERED remanding the file in this case back to the Phoenix City Court for all further and future proceedings, which may include the refiling of charges against Appellee John Rodriguez.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT